IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 555 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RUDRAPRATAPSING SUKHPALSING
Versus
STATE OF GUJARAT

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Appearance :
MR KB ANANDJIWALA for Appellant.
MR PD BHATE, APP for Opponent.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 11/12/2007

ORAL JUDGMENT

1. This appeal arises out of a judgment and order dated 29th May 1997 passed by learned Additional Sessions Judge, Bharuch in Sessions Case No.138 of 1996.

2. Appellant was the sole accused in the above mentioned Sessions Case. He was charged with having committed offences punishable under Sections 498 (A), 306 of the Indian Penal Code.

3. Prosecution case was that the wife of the appellant, Renusing committed suicide in the night between 1st and 2nd March 1996, on account of cruelty and dowry demands of the husband. It is the case of the prosecution that the husband had extra-marital relations and was also demanding dowry from the wife. She, therefore, committed suicide by hanging.

4. To bring home the charge, prosecution examined mainly four witnesses, in addition to the panch witnesses.

5. Panch, Zohraben Ahemadbhai, P.W.1 was examined at Exh.12. She was doing the work of cooking and household work in the house of the appellant-accused. She stated that Renusing committed suicide by hanging since she was keeping very ill. Before her death, Renu had gone with the witness to make a phone call from STD booth. She did not know who the call was made to or on which number. On telephone Renu stated that her health is not keeping good and she may, therefore, be taken away. Zohraben had paid the bill of Rs.60/- for the phone call.

5.1 In her cross-examination, she stated that usually when she went to do her work, Renu would be lying down on the bed on account of illness. She was suffering from T.B. She had to be often taken to hospital for treatment. At the time when Renu committed suicide her relations with her husband were good. They used to spend time together and eat together. Till she died, Renu's relatives were never coming to see her at her house. She used to repeatedly tell the witness that she is tired of the

sickness. When she made the phone call, the witness was right next to her and, therefore, she could hear that Renu conveyed on phone that she is tired of her illness. Even after making the phone call relatives of Renu had never come to visit her till she expired.

6. Dr.Pramod Patel, P.W.4, was examined at Exh.18. He was the medical officer at Civil Hospital, Bharuch. When on 2nd March 1996 dead body of Renusing was brought to him for carrying out postmortem, he found that spinal cord near the neck had broken. In his opinion, she died on being strangulated. In the cross-examination, however, he agreed that it was a case of death by hanging and not strangulation.

7. P.W.5 , Amarnathsing, Exh.20 was the uncle of deceased Renusing. In his deposition, he stated that he was informed by his brother, Rajbahadursing, P.W.6 that Renusing had called him at Mumbai. She was crying and complained that she is in great difficulty; that her husband is treating her with cruelty because he has illicit relations with another girl. Thereafter, his brother Rajbahadursing had received a phone call from the police station informing him that the girl is very serious. They, therefore, reached Aamod at night. They went to the police station and were informed that the girl has been murdered.

7.1 In his cross-examination, he stated that before her marriage, Renusing used to reside with Rajbahadursing at Kurla in Mumbai. He admitted that before marriage Renusing was suffering from T.B. He, however, denied that she committed suicide on account of the illness.

8. Rajbahadursing, P.W.6, Exh.22 is another uncle of Renusing. In his deposition, he stated that on 24th February 1996, he had received a call from Renusing from Aamod between 8 to 9 p.m. First time the

phone got disconnected. Renu called again and she was crying. She complained that the accused beats her and is demanding Rs.2 Lacs from her. He consoled her that she may come to Mumbai with the accused or he would bring her home. He spoke to his elder brother, Amarnathsing, P.W.5 about the phone call. On 2nd March 1996, he received a call at his office informing him that Renusing is serious. His elder brother, Amarnathsing and one Rakesh left for Aamod. He received a call from his brother Amarnathsing on 3rd March from Aamod saying that Renusing has died. He felt that Renusing was murdered by her husband because of the dowry and his illicit relations with someone else.

8.1 In his cross-examination, he stated that before marriage Renusing was residing with him at Kurla. He had treated her for T.B. He, however, told that after marriage she had completely recovered. He could not say whether the accused was having Renusing treated. He denied that Renusing had called from Aamod and told him that she is tired of the illness.

9. Pravinsinh Ranjitsinh, P.W.7 was a police witness. He had produced telephone call print out from the STD-PCO from where Renusing made a call to her uncle on 24th February 1996.

10. This, in the nutshell, is evidence of the prosecution.

11. Before attempting to appreciate the evidence on record, I would like to observe that the entire case has been handled with a degree of insensitivity. The investigation, the prosecution and even the approach of the witnesses at times betray a certain callous approach.

12. A young lady, within two years of her marriage, lost her life due to unnatural cause. Whether it was a case of suicide on account of cruelty by the husband or whether it was a case of suicide due to reasons unrelated to the accused was, therefore, extremely important to be found out. Unfortunately, the investigation and prosecution leaves much to be desired.

13. As noted earlier, P.W.1, Zohraben stated in her examination-in-chief that Renusing committed suicide since she was tired of her illness. Thus, at the very outset, she gave a clean chit to the accused. In her cross-examination, she further stated that Renusing used to remain ill and would usually be found lying down on the bed. She had to be frequently taken to hospital for treatment. Her relations with her husband were good. Renu used to tell her frequently that she is tired of her sickness. This witness thus deposed as if she was a defence witness. Significantly, her statement in the chief that Renusing committed suicide due to her sickness was materially different from what she had stated before the police during investigation. Unfortunately, no steps were taken to declare this witness hostile and seek her cross-examination. In face of the evidence by Zohraben, the prosecution cannot proceed an inch further to secure conviction of the accused. Particularly, when at the very outset this witness gave a clean chit to the accused in her examination-in-chief itself, the prosecutor ought to have sprung to action and sought permission of the Court to declare her hostile. Her deposition was, however, allowed to be recorded as if it is the prosecution theory. No more example of negligence on the part of the prosecution would be easily available.

14. Dr.Pramod Patel, P.W.4 also in my opinion acted in a most irresponsible fashion. In his examination-in-chief, he stated that it was a

case of murder by strangulation. In his postmortem, he had never made any such note. It was not even the case of the prosecution that Renusing was murdered. Without any supporting medical observations, he made a rather bald statement that it was a case of murder by strangulation. In the cross-examination, he immediately retracted from this position and agreed that it was a case of death by hanging and not one of strangulation. Surely, unnatural death of a young lady deserved more careful approach.

15. Ordinarily, I would have considered reopening of the case and inquired whether the prosecution even at this stage would like to seek cross-examination of Zohraben, P.W.1, after and if granted permission to recall the witness, however, in the facts of the case this would remain an empty formality.

16. As noted, the prosecution theory was that Renusing committed suicide on account of cruelty by her husband. Even discarding the evidence of Zohraben, it would be necessary to examine whether there is any other evidence to convict the accused.

17. As noted earlier, it was Rajbahadursing, P.W.6, to whom Renusing had spoken to on a telephone in the night of 24th February 1996 from STD booth. So far as Amarnathsing, P.W.5 is concerned, he only was told about such conversation by his brother Rajbahadursing. His evidence in this regard would, therefore, be of no use.

18. On record only piece of evidence which the prosecution could lay was the alleged conversation by the deceased with her uncle Rajbahadursing, P.W.6. According to this evidence, Renusing complained to him that her husband beats her and is demanding Rs.2

Lacs. Significantly, in his statement, witness does not disclose that Renusing complained that her husband was having illicit relations which was also the reason for the cruelty. P.W.5, Amarnathsing, however, in his deposition stated that Renusing had complained to Rajbahadursing, P.W.6, on telephone of cruelty on account of extra-marital relations of the accused. Thus, internally also, there is material contradiction about what Renusing conveyed to Rajbahadursing on telephone. It is only at the later portion of his examination-in-chief that Rajbahadursing said that he was of the opinion that Renusing was killed and that the reason for the same was that her husband wanted more money and had illicit relations with someone else.

18.1 This witness Rajbahadursing does not say that Renusing, on telephone, told him that one of the reasons for cruelty by the accused on her was illicit relations of the accused with another girl. Significantly, Amarnathsing, P.W.5, does not state dowry as a reason for the cruelty.

19. Even otherwise, except for the statement of Rajbahadursing that Renusing called him up on 24th February 1996 and complained of cruelty, there is no iota of evidence on record to establish this fact. Admittedly, Renusing was not uneducated. She was residing with her uncle Rajbahadursing at Mumbai before marriage. Admittedly again, after 24th February 1996, when Renusing called up her uncle frantically telling him to take her away, he took no steps till 2nd March 1996. Admittedly, Renusing was suffering from T.B. before her marriage. Considering all these aspects of the matter, I find that even after discarding in toto the evidence of Zohraben, P.W.1, the prosecution has failed to lead sufficient evidence to convict the accused.

20. To reiterate, I find that though the prosecution utterly failed in prosecuting the case with a degree of care and exhibited a certain degree of callousness in not seeking the permission of the Court to declare P.W.1 hostile, I find that no useful purpose would be served in reopening the case after such a gap of time since even in absence of damaging evidence of P.W.1, which is fatal to the prosecution also, there is no other evidence which would permit me to record a finding of guilt against the accused- appellant.

21. In the result, I find that the learned trial Court erred in convicting the appellant. His conviction is, therefore, set aside. The appellant stands acquitted. Bail bonds cancelled. Appeal is disposed of.

(Akil Kureshi, J.)

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